



Kuwait: Cybercrime Law a Blow to Free Speech

Publisher [Human Rights Watch](#)

Publication Date 22 July 2015

Kuwait's new cybercrime law includes far-reaching restrictions on Internet-based speech that breach Kuwait's obligations under international human rights law, Human Rights Watch said today. The National Assembly, which approved the law on June 16, 2015, should amend the law to remove these provisions.

The Cybercrime Law establishes criminal penalties for offenses such as hacking electronic systems and retrieving personal data without authorization, as well as fraud, publishing pornography, and engaging in human trafficking via the Internet. However, articles 6 and 7 also expand the reach of existing prohibitions on print publications to virtually all dissemination of information through the Internet, including online journalism and private use of social media and blogs.

"This new law comes at a time when Kuwait is prosecuting many opposition politicians and activists, journalists, and other government critics using expansive interpretations of moral imperatives and national security requirements," said Sarah Leah Whitson, Middle East director. "It appears designed to allow the authorities even wider legal latitude to curtail Kuwaitis' right to free speech."

On June 22, Yaqoub al-Sane, Kuwait's minister of justice, told media sources that the law was aimed at "preserving social stability" and only applied to individuals who run networks designed to publish pornography or offend others. "Everybody has the right to use mobile devices without being monitored," he said. Yet, the wording of the law contradicts that assurance. Although the law does not provide authorities with additional monitoring powers, it creates a host of new criminal offenses likely to lead authorities to increase their use of existing investigative powers.

A lock icon, signifying an encrypted Internet connection, is seen on a browser in a photo illustration.

EXPAND A lock icon, signifying an encrypted Internet connection, is seen on a browser in a photo illustration. © 2014 Reuters

Article 6 imposes prison sentences and fines for insulting religion and religious figures, and for criticizing the emir over the Internet. These crimes, which already exist under Kuwait's Printing and Publishing Law of 2006, appear to violate international law. Article 6 also prohibits Internet-based statements deemed to criticize the judicial system or harm Kuwait's relations with other states, or that publicize classified information, without exceptions for disclosures in the public interest.

Article 7 imposes a punishment of up to 10 years in prison for using the Internet to "overthrow the ruling regime in the country when this instigation included an enticement to change the system by force or through illegal means, or by urging to use force to change the social and economic system that exists in the country, or to adopt creeds that aim at destroying the basic statutes of Kuwait through illegal means."

The law empowers the authorities to close all outlets or locations in which these crimes are committed for one year and confiscate devices used in committing them.

The International Covenant on Civil and Political Rights (ICCPR), which Kuwait has ratified, guarantees the right to freedom of expression. It allows governments to restrict expression on certain, specific grounds, such as the "protection of national security or of public order, or of public health or morals," but only when restrictions are absolutely necessary and strictly proportionate to the risk of harm to those interests. The cybercrime law's vague provisions surpass these conditions and the law allows prosecutions for political speech that is subject to particular safeguards under the ICCPR.

Kuwait was once viewed widely as the Gulf country most tolerant of free speech. But since a political crisis triggered mass protests and ultimately the resignation of the government in 2011, Kuwaiti officials have repeatedly invoked vaguely worded provisions of the penal code and the national security law to suppress free speech.

Both contain provisions that criminalize "insult," and prosecutors have used them to charge activists, journalists, bloggers, and others for engaging in political or social commentary. Under article 4 of the national security law of 1970, anyone convicted of "committing a hostile act against a foreign country that disrupts Kuwait's political relations with that country or exposes Kuwait to a risk of war" could face at least three years in prison. Since January 2015, authorities have charged at least six people under this provision for tweets deemed critical of Saudi Arabia.

Article 25 of the national security law provides for sentences of up to five years in prison for anyone who publicly insults the emir or "mocks God, the prophets and messengers, or the honor of his messengers and their wives." Since January 2011, the authorities have brought prosecutions under these and other articles against at least 63 people who expressed critical views on Twitter, Facebook, blogs, other social media platforms, and at protests. The United Nations Human Rights Committee, which oversees state implementation of the ICCPR, has commented that heads of government are legitimately subject to criticism and political opposition. It has also said that blasphemy laws are prohibited unless clearly restricted to statements advocating religious hatred that incite to violence or discrimination.

As a state party to the ICCPR and the Arab Charter on Human Rights, Kuwait is required to protect the rights to freedom of opinion and expression. Article 36 of Kuwait's constitution also guarantees freedom of opinion and expression.

"Kuwait's reputation as a relatively rights-friendly Gulf state has taken a nosedive in recent years and this new cybercrime law will only steepen the downward trajectory," Whitson said. "The parliament should promptly amend the law to remove its problematic provisions and uphold the right to free speech."

Key Concerns and Recommendations

Scope of Applicability

The cybercrime law is applicable to acts committed through an "information network" or "an information technology." Article 1 defines an "information network" as more than one communication system of information technology that is linked to others and that can be used to receive and share information. "Information technology," refers to any "electronic tool" with "electrical, digital, magnetic, optical or other similar capabilities." Nothing in the law restricts these definitions in a way that prevents authorities from using them to monitor private uses of Twitter, Facebook, and other social media platforms and mobile phone applications.

The law also expands the scope of the Printing and Publishing Law of 2006 by applying its provisions to Internet-based media publications and journalistic outlets, which could include blogs, and to information dissemination platforms used by private individuals, such as social media networks.

While article 19 of the ICCPR allows for some restrictions on free speech on certain specified grounds, it protects expression that some may find offensive, including comments deemed insulting to public figures, including heads of state or government leaders. The UN Human Rights Committee has made it clear that any restrictions on free speech "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly." And any such restrictions must be clearly defined, specific, necessary, and proportionate to the interest protected. Overbroad restrictions that restrict speech in a wide or untargeted way are not permitted under the ICCPR.

Article 6

Article 6 refers to articles 27 § 1 and 19 of the Printing and Publishing Law of 2006. It imposes penalties of up to a year in prison and a 20,000 Kuwaiti dinar (KD) (US\$66,208) fine for defaming, slandering, mocking, or meddling with "God, the Holy Quran, Prophets, the Noble Companions of Prophet Muhammad, Wives of the Prophet [...], or persons who are part of the Prophet's family" by using an "information network" or "an information technology." The provision extends a prohibition that is already incompatible with international human rights law to an expansive array of Internet-related speech and journalism.

Article 19 of the ICCPR protects speech that criticizes or ridicules religion. Thus, blasphemy laws are incompatible with the covenant unless the statements amount to advocacy of "religious hatred that constitutes incitement to discrimination, hostility or violence," under article 20 § 2 of the ICCPR. Neither article 6 of the cybercrime law nor the relevant clauses of the Printing and Publishing Law include such a qualification. Moreover, the Human Rights Committee states, prohibitions that discriminate in favor of one religion or its adherents are impermissible, as are prohibitions on criticizing religious leaders or commentary on religious doctrine and tenets of faith.

Article 6 also extends the scope of articles 27 § 2 and 20 of the Printing and Publishing Law to statements made with the use of "information networks" or "information technology." Under this provision, the Kuwaiti emir may not be criticized nor quoted without written permission from his office. Violations are punished with a fine of up to KD20,000 (US\$ 66,208).

The ICCPR protects political speech and places particular importance on debate involving public figures. Penalties may not be imposed simply if the speech is insulting or critical of a head of state or other public official, whom the Human Rights Committee considers legitimate subjects of criticism and political opposition.

Article 6 further refers to articles 27 § 3 and 21 of the Printing and Publishing Law. These provisions impose a punishment of up to KD10,000 (US\$33,104) for many other forms of speech. For instance, article 21 prohibits publications that insult or disparage "jurists or members of the public prosecution" or "the integrity of the judicial system." It prohibits publishing "official secret communications" or classified "documents or decrees," with no exception for disclosures that reveal serious abuses or misconduct and for which the public interest in the disclosure outweighs the harm.

The Human Rights Committee says that state parties should not prohibit criticism of state institutions. If they do, restrictions must adhere to strict proportionality standards. This implies that such laws should include certain defenses, such as the defense of public interest, truth, and error, particularly if statements were made without malice. Furthermore, treason laws must be crafted with extreme care and with due regard to the public interest in broad and unfettered access to information. Information of legitimate public interest may not be withheld, unless it harms national security and the authorities can adequately show this harm. Moreover, the Human Rights Committee says that prosecuting "journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information," violates article 19 of the ICCPR.

Article 21 § 9 of the Printing and Publishing Law, applicable to Internet-based statements under article 6 of the cybercrime law, prohibits "causing harm to the relationships between Kuwait and other Arab or friendly countries if that is done through press campaigns." Since January, Kuwaiti authorities have relied on a similar provision in the 1970 National Security Law to prosecute at least six people for nonviolent Twitter posts deemed critical of Saudi Arabian policies. Article 6 provides another legal basis to prosecute such statements.

Yet, the Human Rights Committee has held that a state party to the ICCPR "must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat." The Kuwaiti legal provisions do not specify how "harm to relationships" with other countries will be measured and therefore provide unfettered discretion to the authorities charged with their execution.

Article 6 should be amended to address these issues, and to comply with article 19 of the ICCPR.

Article 7

Article 7 provides for up to 10 years in prison for "any person who commits one of the acts set forth in article 28" of the Printing and Publishing Law "by way of an information network or using an information technology." Article 28 applies to any instigation to "overthrow the ruling regime in the

country when this instigation included an enticement to change the system by force or through illegal means, or by urging to the use of force to change the social and economic system that exists in the country, or to adopt creeds that aim at destroying the basic statutes of Kuwait through illegal means."

Kuwaiti authorities have relied on this provision and a similar provision of the National Security Law of 1970 in at least three cases since 2012 to prosecute people for tweets that did not constitute incitement to violence. Article 7 extends the scope of existing prohibitions to Internet-based statements. While article 19 § 3 of the ICCPR does allow restrictions of free speech that are necessary to protect national security, they must comply with an exacting proportionality test, particularly in the ambit of political discourse. Article 7 is far too broad, will allow the authorities a wide scope to prosecute speech critical of the political system, and provides no guidance to enable individuals to regulate their conduct accordingly.

Article 7 should be amended to conform to article 19 of the ICCPR.

Further Provisions on Punishment

Under article 13, authorities may close shops or locations for a period of one year from the date on which any of the acts listed in the cybercrime law are committed and confiscate devices and software. In cases in which violations reoccur, closures are mandatory. This provision can be used to close down journalistic and media outlets, or even cybercafés, as well as to deny bloggers and other Internet users the means to disseminate opinions or to access information.

Taken together, articles 6, 7, and 13 are an effective barrier to critical political speech over the Internet, contrary to essential safeguards that article 19 of the ICCPR provides. According to the Human Rights Committee, Kuwait is obligated "to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas. [...] States parties should take all necessary steps to foster the independence of [...] new media and to ensure access of individuals thereto."

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